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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,483	12/13/2001	Atsushi Okada	216823USOXPCT	1812

22850 7590 01/10/2005

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EXAMINER	
TRAN, LIEN T	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)	
	10/009,483	OKADA ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this c mmunication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3 and 8-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,3, and 8-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 1,3 and 8-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

In the amendment filed 10/20/04, applicant amends claim 1 to include the limitation that the fresh bread crumbs contains water in an amount of 15-60%. This amendment makes the claim non-enabling. It is not seen how bread crumbs with a moisture content of 15% can be characterized as fresh bread crumbs. In the article " Nutritive value of American Food" submitted by applicant in the previous response, it is shown that toasted bread has a water content of 22.5%. Toasted bread is subjected to drying by toasting and the moisture content is higher than 15%. Also, it is not seen how bread crumbs can be made to have water in amount of 60%. As shown in the table, fresh bread has a moisture content of 34.9 and fresh crumbs have a moisture content of 35. It is not seen how a dough with a moisture content of 60% can be pulverizized into crumbs of the particle size claimed. The high moisture content will cause the dough to clump up. The specification does not teach how the fresh bread crumbs are made.

Claims 1, 3 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rispoli et al in

Rispoli et al. disclose a process of making a bread crumb composition. The process comprises the steps of adhering an adhesive comprising a protein in amount of 1-20% and up to 10% starch. The composition may also contain seasonings such as

salt, sugar, garlic etc... in any amount of up to 15%. The bread crumbs may be of a formulation and may be processed by any means common in the art. The crumbs must be of the size wherein at least 75% by weight of the crumbs are retained on a 20mesh Us standard screen. When the adhesive contains more than a single protein source, it may be desirable to dissolve or disperse the various components of the adhesive (e.g. various proteins, gums or starches in a solvent, followed by drying the solution or slurry and then grinding. The resultant adhesive can then be uniformly applied to the bread crumb surface. (see columns 2-4)

The amounts of protein, starch and sugar fall within the ranges claimed. Rispoli does not disclose the water content of the crumbs, the size of the powdery materials, the moisture content of the bread crumbs after drying.

Rispoli et al do not place any restriction on the type of bread crumbs used as long as the final product after applying the adhesive is free from liquid and free-flowing. Thus, it would have been obvious to one skilled in the art to select any type of bread crumbs having any degree of moisture content as the starting material. This would have been an obvious matter of choice. Bread crumbs having a moisture content closed to fresh bread are known as shown in the " Nutritive Value of American Foods". It would have been obvious to one skilled in the art to select such bread crumbs if one wants a moist product or it would have been obvious for one to choose a drier product if a less moist product is wanted. Rispoli et al do teach using powdery adhesive because the adhesives can be dried and then ground. It would have been obvious to one skilled in the art to determine the appropriate size which will facilitate the process of applying to

the surface of the crumbs. This can readily be determined through routine experimentation. It would have been obvious to one skilled in the art to determine the appropriate moisture content after drying which would give the product the optimum shelf stability.

Applicant's arguments with respect to claims 1,3 and 8-12 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 7, 2005

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1702